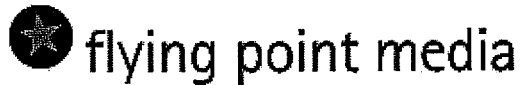


EXHIBIT Q



494 Eighth Avenue, Suite 400
New York, NY 10001
Phone: 212-629-4960

CASE STUDY: BASIC RESEARCH

"We knew the promise of online advertising, but we didn't have the experience or resources to be involved. The Flying Point Media team not only helped us realize this promise, but exceeded any expectations we ever had."

–Gary Sandberg, VP of Marketing, Basic Research

Company Background

Although largely unknown to the public and their consumers, Basic Research is the creative force behind some of the most popular and widely marketed health-related products. Driven to provide unique health supplements that address the specific needs of consumers – ranging from weight loss to bodybuilding, maternity, anti-aging, joint health and more – Basic Research's products are found anywhere from your local GNC to the window displays of Macy's and Bloomingdale's.

Challenge

Since it was founded in 1992, Basic Research has been an aggressive and successful direct marketer. With experience marketing through traditional media such as print, radio, TV, they have quickly grown to a \$350 million company. As the Internet was developing and the audience of online users began to grow rapidly, Basic Research recognized the potential and importance of the Web as a direct response medium. Lacking the knowledge, experience, and expertise in the new medium, they approached Flying Point Media to plan and execute their online marketing efforts.

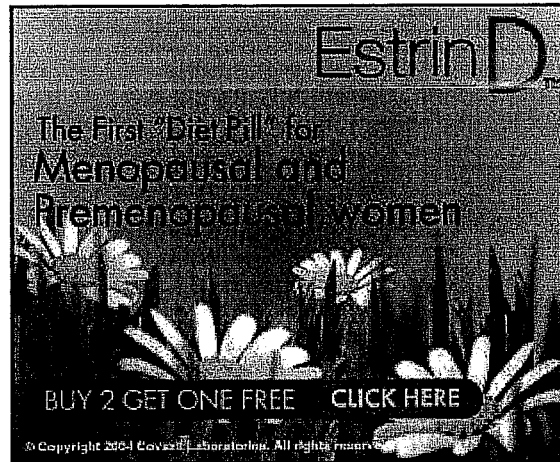
Strategy

With our successful history generating cost-effective sales for direct marketers on the Web, Flying Point sought to transplant the success Basic Research had with traditional media into the online space. Utilizing our knowledge of generating cost-effective sales online, we assembled a marketing plan consisting entirely of media publishers who offered the key components to successful direct online marketing campaigns:

- ① Ad targeting by demographic, content channel, or web-browsing activity
- ① Bulk pricing – enabling our clients to receive the price breaks of our purchasing power
- ① Multiple creative formats including large ad units and rich media
- ① Ability to optimize campaigns daily
- ① Flexible contract terms

Sample Creative

Our specific strategy for Basic Research was to utilize demographic information to identify and target the appropriate consumer for each product. For example, in the case of Estrin-D, a dietary supplement which is designed for women experiencing menopause, our media plan focused on delivering ads exclusively to a female audience, ages 40 and over. Using registration data from their respective user bases, the media publishers we chose were all capable of segmenting ad delivery to a demographic that perfectly matched the Estrin-D target audience. Additionally, we designed creatives that would instill a feeling of serenity and calm, as we understood that women experiencing menopause were going through a period of natural change.



We applied a similar strategy for each product in the entire product line. The result delivered was a highly efficient advertising program that accurately segmented each product's target market and delivered a strong ROI.

Results

Flying Point is now generating over \$5 million in annual sales revenue for Basic Research. In the year 2003, their Internet advertising matched or surpassed the ROI performance of TV, radio, or any other medium. Some other key statistics include:

- ⌚ For every \$1 spent on marketing, Basic Research is generating \$4 in retail sales
- ⌚ The net profit margin on Internet Sales is 20% higher than all other media due to lower overhead costs (no phone costs, customer service costs, limited overhead, etc.)
- ⌚ Online marketing is Basic Research's fastest growing direct to consumer sales segment
- ⌚ The ROI for Internet Marketing has increased every month for over 30 months in a row (see graph below)

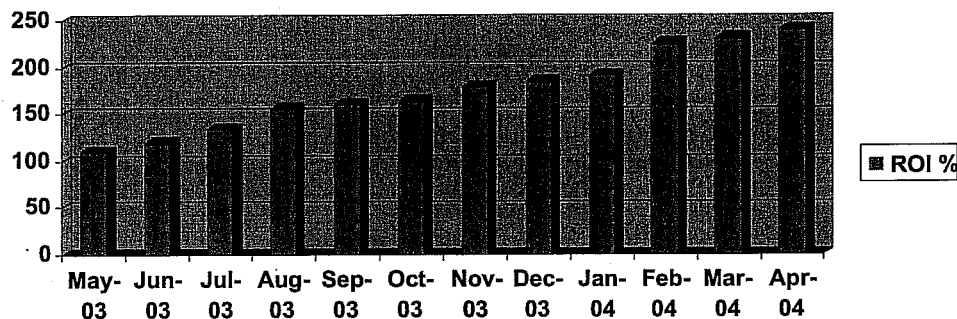


EXHIBIT R

Gross Sales - 6 Products - Inception through P8 (August 13th) 2004

SOItemNumber	SODescription	2000	2001	2002	2003	2004	Grand Total
681168100049	LEPTOPRIN (180) AGW	-	-	630,491	24,729,568	3,542,118	28,902,177
8177777000900	ANOREX (180) KB	-	1,419,889	2,228,208	4,526,890	540,109	8,715,096
8177777001501	PEDIALEAN (120) KB	-	-	477,019	166,686	45,347	689,053
697929122007	CUTTING GEL (4oz) NS	8,531	6,402,333	3,878,658	1,539,026	859,010	12,687,557
784674335001	TUMMY GEL SVG	-	-	2,324,148	693,174	263,612	3,280,935
8177777000306	DERMALIN APG (8oz) KB	1,085,346	5,482,222	2,992,218	1,402,082	603,834	11,565,702
		1,093,877	13,304,444	12,530,742	33,057,426	5,854,031	65,840,521

CONFIDENTIAL
PROPRIETARY
INFORMATION

EXHIBIT S

Dermalin – APg

Information Communication Study

Conducted by:

Edward T.L. Popper, D.B.A.

**CONFIDENTIAL
PROPRIETARY
INFORMATION**

Introduction

This study was conducted in early 2002 to assess the information communicated in advertising for Dermalin APg. The study was conducted by Dr. Edward T.L. Popper, Dean of the Francis E. Girard School of Business and International Commerce, Merrimack College, North Andover, MA. The study's objectives, procedures and results are detailed below.

Study Objectives

This study was conducted to assess:

- What information was communicated by Dermalin APg advertising
- What the impact of that communication was on reasonable consumers' attitudes and behavior
- The extent those consumers relied on that information
- The likelihood that those consumers would suffer material consequences as a consequence of their exposure to that communication.

Study Methodology

This study was conducted using Mall Intercept methodology. This methodology, among the most widely used in marketing and communications research, takes place in shopping centers which are likely to fit the demographic profile of the advertiser's target consumers. Shoppers in the mall are randomly recruited (over a distribution of days and times) and then screened to determine whether they meet the demographic profile of the advertiser and if they are not subject to constraints that would limit or compromise their participation in the study. Selected shoppers (respondents) are then directed to a private research facility at the mall where they take part in the study. Respondents in mall intercept research are typically given a modest gift or honorarium at the conclusion of the study.

Although mall intercept studies are not designed to produce a national probability sample, they have been demonstrated to be effective in providing unbiased results that can be appropriately generalized to the population at large. Where samples are selected to reflect the characteristics of an advertiser's market, mall intercept research has been demonstrated to be appropriately generalizable to the advertiser's target market.

This study was conducted in between January 15, 2002 and February 15, 2002 in shopping malls in five areas of the country. The sample distribution across malls in New York, California, Florida, Illinois and Texas is shown in Table 1. The interviewers used in each of the mall facilities were trained and experienced in advertising communication test research procedures. In addition all interviewers were specifically trained in the procedures used in this study. See Appendix B for the detailed interviewer instructions.

5. According to that advertisement, what are the results someone might expect if they use Dermalin?

RECORD RESPONSES VERBATIM. PROBE WITH "ARE THERE OTHER RESULTS SOME ONE MIGHT EXPECT?" PROBE EXHAUSTIVELY TILL NO FURTHER RESPONSES.

6. If you bought Dermalin and didn't get the results you expected, what would you do?

RECORD RESPONSES VERBATIM. PROBE WITH "IS THERE ANYTHING ELSE?" PROBE EXHAUSTIVELY TILL NO FURTHER RESPONSES.

7. According to that advertisement, are there people who should not use Dermalin?

a. IF NO ____ GO TO QUESTION 8.

b. IF YES ____ ASK Who should not use the product?

RECORD RESPONSES VERBATIM. PROBE WITH "ARE THERE OTHER PEOPLE WHO SHOULD NOT USE DERMALIN?" PROBE EXHAUSTIVELY TILL NO FURTHER RESPONSES.

8. Did the advertisement for Dermalin contain a guarantee?

____ YES ____ NO ____ DON'T RECALL/ NO ANSWER

Now I'm going to give you back the advertisement for Dermalin. You can review the ad now if you'd like and can refer to the advertisement as you answer the next questions.

HAND RESPOND AD FOR DERMALIN

9. According to this advertisement, what are the results someone might expect if they use Dermalin?

RECORD RESPONSES VERBATIM. PROBE WITH "ARE THERE OTHER RESULTS SOME ONE MIGHT EXPECT?" PROBE EXHAUSTIVELY TILL NO FURTHER RESPONSE.

10. If you bought Dermalin and didn't get the results you expected, what would you do?

RECORD RESPONSES VERBATIM. PROBE WITH "IS THERE ANYTHING ELSE?" PROBE EXHAUSTIVELY TILL NO FURTHER RESPONSES.

CONFIDENTIAL
PROPRIETARY
INFORMATION

EXHIBIT T

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

BASIC RESEARCH, LLC,
a limited liability company;

A.G. WATERHOUSE, LLC,
a limited liability corporation;

KLEIN-BECKER USA, LLC,
a limited liability company;

NUTRASPORT, LLC,
a limited liability company;

SOVAGE DERMALOGIC LABORATORIES, LLC,
a limited liability company;

BAN, LLC,
a limited liability corporation, also doing
business as BASIC RESEARCH, L.L.C.,
OLD BASIC RESEARCH, L.L.C.,
BASIC RESEARCH, A.G. WATERHOUSE,
KLEIN-BECKER USA, NUTRA SPORT, and
SOVAGE DERMALOGIC LABORATORIES,

DENNIS GAY,
individually and as an officer of the
limited liability corporations,

DANIEL B. MOWREY, Ph.D.,
Also doing business as AMERICAN
PHYTOTHERAPY RESEARCH
LABORATORY, and

MITCHELL K. FRIEDLANDER,

Respondents.

Docket No. 9318

PUBLIC DOCUMENT

RESPONSE TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 3.35 of the Federal Trade Commission's Rules of Practice, Respondents
Basic Research, LLC, A.G. Waterhouse, LLC, Klein Becker usa, LLC, Nutrasport, LLC, Sovage

Dermallogic Laboratories, LLC, Ban, LLC (collectively, "Respondents") object and respond to Complaint Counsel's First Set of Interrogatories ("Request") as follows:

General Objections

A. Respondents object to the Interrogatories as overbroad and unduly burdensome on the grounds and to the extent that they call for responses that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

B. Respondents object to the Interrogatories on the grounds and to the extent that they seek responses that are subject to (i) the attorney-client privilege; (ii) the attorney and/or party work product immunity, and (iii) any other privilege or immunity, including common law and constitutional right of privacy and/or trade secret protection. Respondents hereby claim such privileges and immunities. Any disclosure of any such privileged or immunized information is inadvertent and is not, and is not intended, as a waiver of those privileges and immunities.

C. Respondents object to the Interrogatories and to the Definitions and Instructions on the grounds and to the extent that they are overbroad, unduly burdensome and oppressive, and purport to impose obligations on Respondents that are beyond the scope of the Rules of Practice or other applicable law.

D. Respondents object to the Interrogatories on the grounds and to the extent that they are vague, ambiguous and unintelligible, particularly in light of the inherent vagueness and ambiguity in the standards employed by the Commission as well as in the charges that have been levied in this matter, which is the subject of Respondents' pending motion for an interlocutory appeal and more definite statement by the Commission.

E. Respondents incorporate by this reference Respondents' Motion to Quash in Part and to Limit Subpoenas on Non-Parties and each response, objection and basis therefore in the motion, and further objects to each Interrogatory on those grounds.

F. Respondents' objections and responses to the Interrogatories are not intended to waive or prejudice any objections that Respondents may assert now or in the future, including,

without limitation, objections as to the relevance of the subject matter of any interrogatory, or of the admissibility of any response or document or category of responses or documents, at hearing, trial or any other time. Respondents expressly reserve any and all rights and privileges under the Rules of Practice, applicable evidentiary rules, and any other law or rule, and the failure to assert such rights and privileges or the inadvertent disclosure by Respondents of information protected by such rights or privileges shall not constitute a waiver thereof, either with respect to these responses or with respect to any future discovery responses or objections.

Specific Objections and Responses

Based on, subject to, and without waiving its General Objections, Respondents specifically and additionally respond to each of the Specifications contained in Complaint Counsel's Interrogatories as follows:

Interrogatory No. 1:

Identify and describe in detail the current and former duties, responsibilities, or work performed by each **person relating to the promotional materials** for each of the **challenged products**. (This request **includes**, but is not limited to, the creation, development, evaluation, approval, modification, and dissemination of **promotional materials**.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence; and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy. Based on, subject to, and without waiving the foregoing responses and objections, Respondents responds as follows:

Respondents interpret this interrogatory as requesting the identity of persons and descriptions of duties, responsibilities and work performed. In providing the following response,

Respondents do not discuss or imply, or intend to discuss or imply, any relationship between any of the parties and/or any of the persons identified below:

1. Dan Mowrey, Ph.D, researched and developed product ideas, concepts and ingredients; performed ad substantiation research, and reviewed ads for substantiation;
2. Mitch Friedlander, determined commercial viability of products, wrote copy, directed ad layout, and assisted with marketing;
3. Gina Gay, placed advertisements with media;
4. Jeff Davis, proof read advertisements;
5. Brett Madsen, assisted with copy layout;
6. Ned Simpson, assisted with copy layout;
7. John Swallow, reviewed ad copy;
8. Nathalie Chevreau, Ph.D., PediaLean project director; assisted with website development for PediaLean; performed PediaLean safety tests;
9. Carla Fobbs, facilitated and obtained substantiation review from outside counsel;
10. Dennis Gay, final approval of products and advertisements; and
11. Stephen Nagin, Esq., performed substantiation review.

Interrogatory No. 2:

Identify and describe in detail the current and former duties, responsibilities, or work performed by each **person** consulted by you, or upon who advise, opinion, or expertise you relied in the production of each of the **challenged products**. (This request **includes**, but it not limited to, the creation, development, evaluation, approval, and manufacture of the **challenged products**.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and

ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence; and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy. Based on, subject to, and without waiving the foregoing responses and objections, Respondents respond by referring to their Response to Interrogatory No. 1, which includes the persons consulted.

Interrogatory No. 3:

Describe in detail the composition of each of the **challenged products**. (This request **includes**, but is not limited to, the identity of each ingredient and the amount of each ingredient contained in a single capsule, application, and serving. If any **challenged product** has been reformulated, provide a separate answer for each version of the product that has been marketed and sold, **identifying** the time period(s) in which each version was marketed and sold.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Based on, subject to, and without waiving the foregoing objections, Respondents refer to Attachment "A," which has been designated pursuant to the Protective Order as "Restricted Confidential, Attorney Eyes Only—FTC Docket No. 9318."

Interrogatory No. 4:

Disclose the total amount of sales, in terms of units and dollars that each Respondent has achieved for each of the **challenged products** for each year from 2001 to the present.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence (the

requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Interrogatory No. 5:

To the extent a **challenged product** is a **substantially similar product** to others products, identify each other product.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Interrogatory No. 6:

Disclose all payments that each **Respondent** has received, directly or indirectly, in connection with the advertising, marketing, promotion, and sale of ach of the **challenged products** for each year from 2001 to the present. (This request **includes** the total dollar amount and source of all payments. For consumer sales, it is not necessary to disclose names, addresses, or telephone numbers.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and

information not reasonably calculated to lead to the discovery of admissible evidence (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Interrogatory No. 7:

Disclose the total amount of dollars that each **Respondent** has spent to advertise, market or otherwise promote each of the **challenged products** for each year from 2001 to the present, broken down by each medium used (*i.e.*, television, print, internet, radio, or other means). (This request **includes**, but is not limited to, all expenditures attributable to the creation, development, evaluation, approval, modification, and dissemination of **promotional materials**).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Interrogatory No. 8:

Provide a **dissemination schedule** that **describes** in detail how each item of **promotional materials** submitted in response to the **Requests for Production** was disseminated or otherwise exposed to consumers.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and

ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Interrogatory No. 9:

Describe in detail the actions each **Respondent** has taken to comply with the U.S. Food and Drug Administration's prohibition on the sale of dietary supplements containing ephedrine alkaloids, effective April 12, 2004. (This request **includes**, but is not limited to, **identification** of any product formulations that have been created, modified, or removed from distribution, **identification** of any **promotional materials** that have been created, revised, or removed from dissemination, and the date(s) on which all of the actions described in your answer took place; and how orders for Leptoprin or Anorex or in response to existing **promotional materials** Leptoprin or Anorex have been fulfilled.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Based on, subject to, and without waiving the foregoing responses and objections, Respondents state that during the first part of April 2004 Basic Research started the process of identifying all products that considered to be "adulterated" according to 21 CFR Part 119, which

Interrogatory No. 10:

Disclose the total amount of refunds to consumers, in terms of units and dollars, that each Respondent has made for each of the **challenged products** for each year from 2001 to the present.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further objects to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and information not reasonably calculated to lead to the discovery of admissible evidence (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); and (d) it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy.

Respectfully submitted this ^{fr}16 day of August, 2004



JEFFREY D. FELDMAN

VERIFICATION

I, Carla R. Fobbs, being duly authorized to execute the aforesaid Answers to Complaint Counsel's First Set of Interrogatories on behalf of Basic Research, LLC, A.G. Waterhouse, LLC, Klein-Becker usa, LLC, Nutrasport, LLC, and Sovage Dermalogic Laboratories, LLC, having read and reviewed said answers, hereby state that foregoing answers are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

Carla R. Fobbs

CARLA R. FOBBS

STATE OF UTAH)

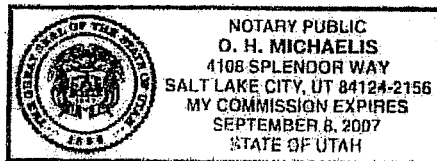
:ss.

COUNTY OF SALT LAKE)

SWORN TO AND SUBSCRIBED before me this 16th day of August, 2004 by CARLA R. FOBBS, who is personally known to me / has produced DRIVERS LICENSE as # 146319373 identification.

O. H. Michaelis
Notary Public, State of Utah

My Commission Expires: 09/08/07





UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Enforcement

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Re: Basic Research et al., Docket No. 9318

Dear Gentlemen:

This letter is in reference to our telephone conferences on discovery that took place on August 23rd, August 31st, and September 1st. Our discussions addressed the parties' concerns about the other side's responses to document requests and interrogatories. This letter focuses primarily upon Complaint Counsel's concerns with Respondents' discovery responses.¹ As you will recall, Mr. Friedlander was not available for our conferences. However, I appreciate the progress we were able to make on a number of issues.

The staff raised a number of issues, including but not limited to Respondents' objections to Complaint Counsel's Interrogatories 5 and 6 and the incomplete response to our Interrogatory 9.

¹ We will enclose our supplemental response to Respondents' Interrogatory 1(a) along with this letter.

Pursuant to those discussions, Complaint Counsel agrees to the following regarding its Interrogatories 5, 6, and 9:

- Regarding Complaint Counsel Interrogatory 5, we explained that the interrogatory definition of “substantially similar product,” *i.e.*, “any product that is substantially similar in ingredients, composition and properties” refers to products that are substantially similar in ingredients **and** composition **and** properties to one or more of the challenged products. The definition requires substantial similarity with respect to all three of these components. This requirement dispels any suggestion that Interrogatory 5 is vague, overbroad, or not reasonably calculated to lead to the discovery of admissible evidence.
- Regarding Complaint Counsel Interrogatory 6, Complaint Counsel is willing to revise its interrogatory as follows: “Identify Respondents that have received any payment, compensation, or income in connection with the marketing, promotion, or sale of each of the **challenged products** for each year from 2001 to the present, disclosing the total dollar amount and source for all payments. (For consumer sales, it is not necessary to disclose names, addresses or telephone numbers.)” This revision dispenses with the need to separately disclose all payments received. We explained that this request would include salary information to the extent that a person’s job included the responsibilities with respect to marketing, promotion, or sale of the challenged product. We understand that the salary information may not include what portion of the salary related to the challenged products. Nevertheless, if a bonus, royalty or some other form of compensation does relate to the challenged products, that information is responsive.
- Regarding Complaint Counsel Interrogatory 9, we pointed out that we still have not received a response to the portion of our interrogatory that seeks “**identification** of any **promotional materials** that have been created, revised, or removed from dissemination” and the “dates” on which the actions in your answer took place. We request that Respondents respond to the rest of Interrogatory 9.

We also note that the Corporate Respondents’ answers to Complaint Counsel Interrogatories 1 and 2 are insufficient. Interrogatory 1 specifically requests information with regard to “promotional materials for each of the challenged products.” Other than the response relating to Ms. Chevreau, Respondents’ answers do not specify the promotional materials and the challenged products for which each person listed performed “duties, responsibilities, or work.” Interrogatory 2, which was not transcribed correctly in your response, seeks information concerning the “creation, development, evaluation, approval and manufacture of the challenged products.” Respondents objected and referenced their answer to Interrogatory 1. However, Respondents’ answer to Interrogatory 1 relates primarily to advertising and substantiation review responsibilities, not the creation, development, evaluation, approval and manufacture of the challenged products themselves. Consequently, we request a response to Interrogatory 2.

Regarding Complaint Counsel Interrogatory 10, you identified approximately 5,000 pages of documents that contain thousands of line items regarding refund information to individual consumers. Interspersed among these documents are but a few summary reports covering limited time periods. Large portions of some of these reports have been redacted. We think that Corporate

Respondents have access to summary information regarding total refund information for each product. We request either an answer to the Interrogatory as propounded or production of a single summary report showing the information requested in the Interrogatory.

As to Mr. Gay, I believe we still need Mr. Gay's signed verification for his interrogatory responses. To the extent, Mr. Gay intends to cross-reference the future answers of the corporate respondents, we offer the same accommodations and seek the same additional information from Mr. Gay discussed above as to Interrogatories 5,6, and 9.

As Mr. Gay incorporated the Corporate Respondents' answers to Interrogatory 1, we have the same issues described above with respect to his answers. We request that Mr. Gay provide a complete response to our request for information with regard to his "duties, responsibilities, or work" regarding "promotional materials for each of the challenged products," identifying what products and advertisements he approved, as well as any other related "duties, responsibilities, or work" that he performed. As to our Interrogatory 2, we seek the requested information from Mr. Gay's perspective. Mr. Gay objected and refused to answer this question. This question is clearly relevant and can be answered without disclosing privileged information. Regarding Complaint Counsel Document Request 11, we are still uncertain of Mr. Gay's position on this issue. I understand that he has been out of the country and request that you let me know what Mr. Gay intends to produce in response to this Request.

Similarly, for Dr. Mowrey, regarding Complaint Counsel Interrogatory 1, we request a complete response to our request for information with regard to his "duties, responsibilities, or work" regarding "promotional materials for each of the challenged products." For Interrogatory 2, we seek more a detailed response describing the "duties, responsibilities, and work" performed by the persons identified by Dr. Mowrey in his answer.

Regarding Dr. Mowrey's objection to Complaint Counsel Document Request 7, we emphasized in our discussion that this request is not seeking the holiday cards and personal financial information referenced in Dr. Mowrey's objection. Rather, our request is requesting those **documents and communications** relating to the persons depicted, named and quoted in **promotional materials for the challenged products**. To the extent that this Document Request seeks documents from Dr. Mowrey relating to himself, Complaint Counsel seek only those documents referring or relating to his participation or appearance (*i.e.*, depiction, naming, quoting, endorsement) in such promotional materials. Dr. Mowrey produced no documents responsive to this request and can reasonably determine what documents relate to the persons referenced in the promotional materials rather than personal information or correspondence he possesses.

We are continuing to explore the issue of how to search the bins of documents that Respondents have collected. These bins were retained during the course of the FTC's investigation in order to preserve potentially relevant evidence. The bins almost certainly contain material that is responsive to our discovery requests. Complaint Counsel has offered to search these bins for responsive documents and negotiate a "claw-back" agreement to handle privileged materials. We would like to discuss this issue further next week so that we can either resolve it or file an appropriate motion.

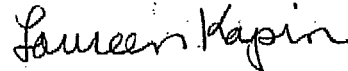
Mr. Feldman agreed to provide a "disc" copy of Respondents document production. Mr.

Nagin's prior productions during the investigation had been provided via a disc containing scanned copies of the documents. Mr. Feldman also agreed to get back to us on the issue of a privilege log for the first part of Respondents' document production.

Per Mr. Feldman's request, we are holding off on producing documents in light of the threatened hurricane. We will plan on producing the documents next week but will verify an exact date and place with Mr. Feldman to ensure that the documents are mailed to a suitable (and dry) location.

We appreciate your cooperation on these matters. If you have any questions or if your understanding differs from mine, please call me at 202-326-3237.

Sincerely yours,



Laureen Kapin
Senior Attorney

cc: Mitchell K. Friedlander
5742 West Harold Gatty Dr.
Salt Lake City, UT 84116
Mkf55@msn.com

EXHIBIT V

Millard, Joshua S.

From: Schneider, Laura
Sent: Tuesday, November 09, 2004 9:25 AM
To: Millard, Joshua S.
Subject: FW: Discovery Call (disregard last email)

-----Original Message-----

From: Schneider, Laura
Sent: Monday, October 25, 2004 11:50 AM
To: 'Christopher P. Demetriades'
Subject: Discovery Call (disregard last email)

Chris:

As discussed earlier during our telephone conversation, we'd like to set up a time this week to discuss some outstanding discovery issues (mostly listed in the Sept 22nd letter that are still outstanding):

Regarding the document requests:

1. Specification 2 - issues about final telephone marketing materials, draft advertisements, and other materials which we specifically listed in Sept 22nd letter.
2. Specification 3 - lack of emails prior to August 4, 2003, lack of training materials used to instruct telephone operators
3. Specification 6 - lack of documents including specific examples given in Sept 22nd letter
4. Specification 8 - still missing documents
5. Specification 11 - still haven't received documents
6. Specification 12 - still do not have net sales figures
7. Progress on the search of the bins
8. Privilege log insufficiencies

And with respect to the outstanding interrogatories:

9. Interrogatories 1 and 2 - still have incomplete responses
10. Interrogatory 5 was clarified - but still no response
11. Interrogatory 6 was revised - but still no response
12. Interrogatory 9 still incomplete.

Please invite Mr. Friedlander to this discussion since he has also yet to supplement his responses to Document Requests and Interrogatories as promised.

We are available most days this week. Thanks.

Laura Schneider
Federal Trade Commission
Bureau of Consumer Protection
Division of Enforcement
600 Pennsylvania Avenue, N.W. (NJ-2202)
Washington, D.C. 20580
TEL: (202) 326-2604
FAX: (202) 326-2559



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Enforcement

Laureen Kapin
Senior Attorney

(202) 326-3237
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Fax

November 5, 2004

Via Electronic Mail and First Class Mail

Jeffrey Feldman, Esq.
FeldmanGale, P.A.
Miami Center, 19th Fl.
201 South Biscayne Blvd.
Miami, FL 33141-4322

Re: *Basic Research et al.*, Docket No. 9318

Dear Mr. Feldman:

This letter is in regard to our request for a supplemental response to our interrogatory 1. In your October 8, 2004 letter, you agreed to provide "a supplemental answer that identifies individuals who have done particular promotional work in relation to the challenged products." You asked for more information on the particular promotional materials that we sought information about. I believe that our original interrogatory one was clear in that it asked Respondents to:

Identify and describe in detail the current and former duties, responsibilities, or work performed by each person relating to the promotional materials for each of the challenged products. (This request includes, but is not limited to, the creation, development, evaluation, approval, modification, and dissemination of promotional materials.)

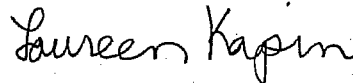
Nevertheless, we want the information described above as it pertains to documents within the following bates ranges:

R 224-320;
R 6545-6586;
R 6719-6932;
R 8943-8965;
R 6587-6691;
R 9192-9363;
R 12259-12309;
R 8966-9024;
R 12310-12358;
R 29672-29785;
R 29786-29896;
R 35521-35571;
R 35572-35704;
R 32749-37290;
R 35705-35712;
R 44459-44521;
R 43871-44391;
R 44392-44458; and
R 44522-44562

We also want the information requested in the interrogatory as it pertains to all print ads, radio ads, internet ads, television ads, packaging and package inserts, regarding the Challenged Products irrespective of whether or not those advertisements were attached to or referenced in the Complaint.

Please let me know when I can expect to receive this information. This interrogatory has been pending since June and depositions will begin this month. Accordingly, I hope you can provide this information shortly.

Sincerely yours,



Laureen Kapin
Senior Attorney

Millard, Joshua S.

From: Kapin, Laureen
Sent: Wednesday, December 01, 2004 12:56 PM
To: 'jfeldman@feldmangale.com'
Subject: Interrogatory 1 follow up

Jeff- as we discussed I still need information identifying the persons who worked on the Promotional Materials for each challenged products. The original interrogatory stated:


Identify and describe in detail the current and former duties, responsibilities, or work performed by each person relating to the promotional materials for each of the challenged products. (This request includes, but is not limited to, the creation, development, evaluation, approval, modification, and dissemination of promotional materials.)

I need to know who worked on the print, radio, television, Internet, e-mail, telephone scripts, and any other Promotional Materials (as defined in the interrogatory) for each of the Challenged Products. For each person identified, I need to know what products and what type of medium they worked on. This includes both current and former employees and 3rd parties.

We are seeking to finalize the deposition schedule and I need this information in order to assess who to depose. Thanks for your assistance.

Laureen Kapin, Senior Attorney
Enforcement Division
Bureau of Consumer Protection
Federal Trade Commission
(202) 326-3237
"LKapin@FTC.gov"

EXHIBIT W

Source: [News & Business](#) > [News](#) > [News, All \(English, Full Text\)](#) 

Terms: **john w/1 swallow & basic w/1 research & mistake** ([Edit Search](#))

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The Salt Lake Tribune, September 4, 2004

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Salt Lake Tribune (Utah)

September 4, 2004, Saturday

SECTION: Final; Pg. A1

LENGTH: 759 words

HEADLINE: Dietary supplement firm says Swallow OK'd disputed ads ; FTC complaint: 2nd Congressional District candidate says **Basic Research's** legal filing must be a **mistake**; Swallow says he didn't review the ads

BYLINE: Robert Gehrke , The Salt Lake Tribune

BODY:

WASHINGTON -- As an attorney for a major Utah dietary supplement firm, congressional candidate **John Swallow** approved advertisements for several products that federal regulators say were misleading or deceptive, according to a legal filing by the company.

The Federal Trade Commission has alleged that ads for six products manufactured or marketed by **Basic Research** and its subsidiaries were false or unsubstantiated, including a cream that "dissolves surface body fat wherever applied."

In a filing with the FTC, the company states that Swallow "reviewed ad copy" for the products in question.

Swallow said the filing must be a **mistake**, because in three years as the company's general counsel he primarily handled contract and human resource matters.

"If they had me reviewing the ads, they would've been nuts because I don't know a thing about that FTC stuff," he said. "I'm not even sure which ads they're talking about. That wasn't my role at all."

Dave Owen, a spokesman for **Basic Research**, said the company reviewed its records after the FTC filing and they do not reflect Swallow working on ad preparation. When Swallow worked for the company, it was a \$ 6 million business and work was farmed out to a handful of law firms. This year, its business will approach \$ 300 million and employ some 20 law firms.

"It would have been completely outside his job description to do that," Owen said. "He doesn't have any background in that. You just wouldn't have him do that."

The FTC is seeking to force the company to cease its claims and stated that it could seek damages and restitution for customers who bought the products.

The FTC complaint targets a "Tummy Flattening Gel" and two similar products, Dermalin and Cutting Gel. Customers who paid as much as \$ 89 for 4 ounces of the cream could apply the compound anywhere and "the fat literally melts away, leaving pure, ripped muscle behind!"

Also in question are ads for two ephedrine- and caffeine-based diet pills touted as "much too powerful for the 'casual dieter,' " that give the impression, according to the FTC, that "serious dieters" who take the pill could lose upwards of 60 pounds.

Each supplement sold for \$ 153 for 180 tablets before the Food and Drug Administration ordered ephedra-containing products off the market following the death of Baltimore Orioles pitcher Steve Bechler.

Another is PediaLean, a supplement made from the konjac root. Ads for the product proclaim, "Now there's hope for you and your Overweight Child!" It goes on to say it is the "first and only clinically proven, safe and effective weight-control compound designed for children and adolescents."

At a hearing in June, members of the House Energy and Commerce Subcommittee on Investigations were dubious of the supplement's weight-loss claims.

Swallow was paid roughly \$ 82,000 annually by the company from 1999 to 2002, according to his personal financial disclosure forms. His Web site says he still does consulting work on supplement issues.

Utah's booming dietary supplement industry has rallied to support Swallow's candidacy. Dietary supplement executives had contributed \$ 43,750 to Swallow's campaign through June 30 and \$ 57,300 to his 2002 campaign. On Aug. 19, industry executives were invited to a fund-raiser headlined by House Speaker Dennis Hastert. It was expected to raise \$ 100,000 for the Swallow campaign.

"Few in Congress have John's background and understanding of [the Dietary Supplement Health and Education Act] and getting John elected is critical," the invitation said. "The industry needs **John Swallow** in Congress so he can strengthen and protect our right to manufacture and distribute safe and effective supplements without being over regulated by the FDA."

In addition to being general counsel for **Basic Research**, Swallow has been a member of the National Nutritional Foods Association and the Rocky Mountain Nutritional Foods Association, industry groups that are concerned with efforts to rewrite the Dietary Supplement Health and Education Act.

The act, originally crafted by Sen. Orrin Hatch, placed the burden on the Food and Drug Administration to show that an herbal supplement poses a risk to the public and should be taken off the market.

Critics say it has made it too easy for companies to market useless or potentially harmful herbs and too hard for the government to stop them.

The FTC has scheduled a hearing on the complaint for later this month, although the hearing may be postponed.

gehrke@sltrib.com

GRAPHIC: John Swallow

LOAD-DATE: September 05, 2004